IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

WP(Crl.).No. 153 OF 2007(S)

PETITIONER:

ABDUL KAREEM P.A.AGED 65 YEARS,
S/O.ABOOBACKER,PALATHURUTHYPARAMBU HOUSE,
THAMMANAM,POONITHURA VILLAGE,ERNAKULAM DISTRICT.

BY ADV. SRI.K.A.JALEEL
SRI.C.ANILKUMAR (KALLESSERIL)
SRI.N.K.POULOSEKUTTY
SRI.RAFEEK. V.K.

RESPONDENTS:
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1. STATE OF KERALA REPRESENTED BY THE
CHIEF SECRETARY OF GOVERNMENT,SECRETARIATE,
TRIVANDRUM.

2. THE PRINCIPAL SECRETARY TO GOVERNMENT
HOME DEPARTMENT,SECRETARIATE,TRIVANDRUM.

3. THE DISTRICT COLLECTOR, &
DISTRICT MAGISTRATE,ERNAKULAM DISTRICT.

4. THE COMMISSIONER OF POLICE,KOCHI CITY.

5. THE SUPERINTENDENT,CENTRAL PRISON,VIYYUR

6. THE SUB INSPECTOR OF POLICE,
PALARIVATTOM POLICE STATION,ERNAKULAM.

GOVERNMENT PLEADER SRI. RAVINDRANATH.

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 17/08/2007, THE COURT ON 07/09/2007, DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	TRUE COPY OF THE DETENTION ORDER DATED 11.6.2007 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER'S SON.
EXT.P2	TRUE COPY OF ORDER DATED 22.9.2006 IN B.A. 5389/2006 IN CRIME 435/2006 OF CHENGAMANAD POLICE STATION, ON THE FILE OF THIS COURT.

RESPONDENTS' EXHIBITS:

ANNEXURE A:	A TRUE COPY OF THE JAIL ADMISSION AUTHORIZATION DATED 11.6.2007 ISSUED TO THE 5TH RESPONDENT BY THE DISTRICT COLLECTOR.
ANNEXURE B:	A TRUE COPY OF THE ORDER NO. 42198/SSA4/2007/ HOME DATED 19.6.2007 ISSUED BY THE HOME DEPARTMENT.
ANNEXURE A1:	A TRUE COPY OF THE DETENTION ORDER WITH THE ENDORSEENT BY THE PETITIONER'S SON ON THE BACK OF THE ORDER.
ANNEXURE A2:	A TRUE COPY OF THE CERTIFICATE ISSUED BY THE HEAD MASTER, ST. RITAS HIGH SCHOOL, PONURUNNI.
ANNEXURE A3:	A TRUE COPY OF THE ORDER ISSUED BY THE GOVERNMENT EXTENDING THE DETENTION PERIOD.
ANNEXURE R3(a)	TRUE COPY OF THE MEMO FOR EXECUTING ORDER NO. M7. 26662/07 (8) DATED 11.6.2007 OF THE DISTRICT COLLECTOR & DISTRICT MAGISTRATE, ERNAKULAM.
ANNEXURE R3(b)	TRUE COPY OF JAIL ADMISSION AUTHORIZATION NO. M7.26662/07(8) DATED 11.6.2007 OF THE DISTRICT COLLECTOR & DISTRICT MAGISTRATE, ERNAKULAM.
ANNEXURE R3(c)	TRUE COPY OF THE GOVERNMENT ORDER NO. G.O. 42198/SSA4/2007/HOME DATED 19.6.2007.

// TRUE COPY //

P.S. TO JUDGE.

P.R. RAMAN & K. HEMA, JJ.

W.P.(CRL) NOS. 153 OF 2007

DATED THIS, THE 7TH DAY OF SEPTEMBER, 2007.

J U D G M E N T

Raman, J.

Petitioner is the father of Shaji, who is alleged to be illegally detained by the respondents under the provisions of the Kerala Anti-social Activities (Prevention) Ordinance, 2007 (hereinafter referred to as 'the Ordinance'), pursuant to Ext.P1 detention order dated 11.6.2007, issued by the third respondent, who is the Authorised Officer appointed under Section 3(1) and (2) of the said Ordinance. Petitioner seeks to quash Ext.P1 detention order by issuance of a writ of certiorari and for issuance of a writ of Habeas Corpus directing the respondents to produce the body corpus of his son Shaji before this Court and to set him at liberty.

2. Ext.P1 order of detention issued by the District Collector and District Magistrate in exercise of his powers under Section 3(1) and (2) of the ordinance. The said order is stated to have been issued based on credible information received from the Station House officer of Palarivattam Police Station vide its FIR. No. 372/2007 dated 10.6.2007 through the

Commissioner of Police, Kochi City against Shaji. The substancne of the information received is that the said Shaji is involved in and around 19 criminal cases including attempt to murder, hurt, Arms Act etc. He has also been booked under the preventive provisions of Code of Criminal procedure, four times in the pas and he is a known rowdy as defined in the KAAPO, 2007. Confidential information suggests that many antisocial activities take place under his guidance and protection and that he and his gang are very active and likely to commit serious offences in the immediate future. The detaining authority evaluated the aforesaid information in the context of the circumstances pertaining to public safety and orders in Kochi City and after considering the facts reported with regard to Shaji, the authority satisfied that Shaji is a known rowdy and if he remains at large, he would indulge in antisocial activities with regard to Kochi City which would directly or indirectly cause harm, danger or alarm or a feeling if insecurity or cause threat to public life among the general public or residents of Kochi City or result in grave or widespread danger to life in the said area. Therefore, with a view to prevent him from acting in such a manner as aforesaid, the detaining authority ordered, in exercise of the powers under Section 3(1) and 3(2) of the Ordinance to place Shaji under detention with immediate effect for a period of ten days at Viyyur Central

Jail. The grounds forming the basis of the order is also attached separately which is produced as Ext.P1(2). The Government, by Ext. R3(c) order dated 19.6.2007, after examining the detention order and connected documents received from the District Magistrate, Ernakulam, having convinced that Shaji is a known rowdy and if he is allowed to continue his activities, it will cause danger, alarm and a feeling of insecurity among the public. Accordingly, his detention was found justified and considering the gravity of his criminal activities, it was found that his detention for only ten days as ordered by the District Magistrate is insufficient to serve the purpose of detention envisaged in the Ordinance and hence exercising the power under Section 13(1) of the Ordinance, Government modified the period of detention as six months from the date of detention and confirmed the detention order as modified under Section 3(3) of the Ordinance.

3. According to the petitioner, the detention order Ext.P1 is unsustainable in law and the illegal custody and confinement of his son is an infringement of the fundamental rights guaranteed to him under Articles 14, 19(1)(d), 21 and 22 (5) of the Constitution of India. It is alleged that the detention order is void ab initio since the documents which form its basis is not served on the detenue, along with the grounds of detention resulting in depriving him the opportunity to make effective representation before

proper authority as provided by the Ordinance. Further, the language of the order is in English which is unknown to the detenue. It is his case that the third respondent ought to have issued the order of detention in the Regional Language of the detenue ie. in Malayalam. According to the petitioner, his son is not involved in any anti social activities as defined under Section 2 (a) of the Ordinance nor is he a known gunda or a known rowdy within the meaning of Section 2(o) or 2(p) of the Ordinance. According to the petitioner, Ext.P1 order was passed without proper application of mind, the grounds of detention were not given with sufficient elaboration regarding the crime numbers and the third respondent has proceeded in a mechanical way and so the order is vitiated because of non application of mind. It is further alleged that the detenue was not appraised of his right to represent to the Government and before the Advisory Board against his arrest and detention and Ext.P1 order was not confirmed by the Government as provided under Section 3(3) of the Ordinance. It is his further case that the detenue was on bail in all the cases mentioned in Ext.P1 order and therefore, the detaining authority has to necessarily rely upon them before passing detention order. Since the factum of the bail order in all the cases were suppressed by the police authorities from the third respondent, who is the authorised officer, Ext.p1 order is bad in law and is liable to be set aside.

4. Referring to Ext.P2 bail order dated 22.9.2006in B.A. 5389/2006 (Crime No. 435/06 of Chengamanad Police Station) it is alleged that non consideration of the said order by the detaining authority has vitiated the order Ext.P1. Learned counsel appearing for the petitioner also sought to place reliance on the observations contained in the order of bail Ext.P2 and contended that the submission of the counsel appearing for the detenue in the said case was that he has changed and fully reformed and this Court had therefore, inclined to give him an opportunity so that he may not be continuously put into the group of persons with whom he had acquaintance or connected activities.] in future.

5. In the counter affidavit filed by the third respondent, besides denying the allegations contained in the writ petition, it is also stated that credible information was received from the Station House Officer, Palarivattom Police Station through the Commissioner of Police, Kochi City, against Sri. Shaji, vide FIR No. 372/2007 which contained information about his involvement in ten criminal cases registered in Ernakulam Town North Police Station. In para 3 of the counter affidavit, it is averred as follows:

> "The said report contained information about the involvement of Sri. Shaji @ Thammanam Shaji in 10 criminal cases registered in Ernakulam Town North Police Station . (Cr. 177/92 u/s. 143, 147, 148, 427, 323, 324, 307 Cr.PC r/w.

149 IPC, Cr.120/92, u/s. 341, 427, 324 Cr.P.C. r/w 34 IPC, Cr. 219/93 u/s. 143, 147, 341, 323, 448 Cr.PC r/w 149 IPC, Cr. 155/94 u/s. 143, 147, 148, 324, 323, 307 Cr.PC r/w 149 IPC, CR 198/95 u/s. 107 CrPC, CR 364/00 under S. 452, 323, 506 (1) Cr.P.C. and 34 IPC, CR. 178/01 u/s. 110(e)(g) Cr.P.C., CR 9/01 u/s. 27 of Arms Act, CR 190/02 u/s. 395 IPC, CR 432/04, u/s. 109, 450 Cr.P.C. r/w 395 IPC, 5 Criminal cases registered at Kalamassery Police Station (CR 294/93, u/s. 143, 147, 447, 506 (ii), 341, 323, 427 Cr.PC. r/w. 149 IPC, CR 105/94 u/s. 107 Cr.PC., CR 114/94 u/s. 27 of the Arms Act, CR 102/95 u/s. 341, 323, 324 Cr.PC, 34 IPC, C.R. 160/99 u/s. 143, 147, 148, 341, 324, 307 Cr.P.C. r/w. 149 IPC) 2 cases registered at Palarivattom Police Station (CR. 13/93 u/s. 341, 323, 324 Cr.P.C. r/w. 34 IPC, CR 62/04 u/s. 451, 341, 324, 427 Cr.PC, r/w 506 (i) IPC, 1 case registered at Ernakulam Town South Police Station (CR 125/96 u/s. 27 of Arms Act) and 1 case registered at Chengamanad Police Station (Cr. 435/06 u/s. 419, 468, 471, 12 (1 b & d) of Passport Act, spanning the period from 1992 to 2006. The offence relating to the said cases include attempt to murder, unlawful assembly, rioting, causing hurt by dangerous weapons, criminal intimidation, offences under Arms Act etc. Security proceedings were initiated four times against Sri. Shaji @ Thammanam Shaji, u/ss. 107 & 110 of the Code of Criminal Procedure."

6. It is further stated that the Commissioner of Police, Kochi City, as per his report dated 10.6.2007, reported that Sri. Shaji is currently involved in activities prejudicial to the maintenance of public order, that he is a known rowdy as defined in the Ordinance, that he is presently functioning as a goonda leader with many anti socials in the gang under him and he is very active and many antisocial activities occurring in the area is under his guidance and protection though he is physically not present on

the ground and that he works through intimidation and coercion to settle various financial transactions and has a hold in the land and the building mafia in Kochi City. According to the third respondent, after examining and evaluating the said reports including the preliminary report of the Circle Inspector of Police, Ernakulam Town, forwarded along with the report dated 10.6.2007 of the Commissioner of Police, Ernakulam and the connected records of the cases, he was satisfied that Sri. Shaji is a known rowdy as specified in the Ordinance and that if he remains at large, he would indulge in anti-social activities with regard to Kochi City which would directly or indirectly cause harm, danger or alarm or a feeling of insecurity or cause threat to public life among the general public or residents of Kochi city or in grave or widespread danger to life in that area and hence he issued Ext.P1 order of detention against the petitioner's son in exercise of the powers conferred on him under Section 3(1) and 3(2) of the Ordinance. It is further stated that the Commissioner of Police, Kochi was directed to take Shaji into custody and to transfer him to central Jail, Viyyur and to comply with all the procedures prescribed for effecting arrests such as serving copies of detention order and grounds to the detenue. Annexuure R3(a) is the memo issued for executing the detention order. The fact of his arrest was also reported to the Principal Secretary to Government, Home Department and

Director General of Police, Kerala, along with the copy of the order and supporting materials on 12.6.2007. The Government, as per their order No. G.O. 42198/SSA4/2007 Home dated 19.6.2007 confirmed the order of detention modifying the period of detention to six months from the date of detention. Ext.R3(c) is the confirmation order passed by the Government, in this regard. In the counter affidavit fled by the third respondent, it is stated that there are very definite confidential informations that Shaji is very active and is presently working as a goonda leader and that he has been booked under the preventive sections of the Code of Criminal procedure, four times in the past which itself is indicative of the fact that he has shown no tendency to correct himself and to live as a law abiding person. The confidential information from the locality suggests that the gang working under the detenue is likely to commit serious offences which would endanger the peace and tranquility of the area and would be a threat to the public at large, necessitating issuance of an order of preventive detention against him.

7. The 4th respondent Commissioner of Police, in a separate statement filed in the case, stated that the petitioner's son is one of the most notorious antisocials of Kochi City with proved involvement in numerous criminal cases. It was after careful evaluation and study of his past records

and present activity as envisaged under the Ordinance that the authorized officer has passed the detention order, Ext.P1 produced in te case. In para 4 of the statement, it is stated that the detenue was served with the detention order with the grounds of detention and acknowledgment to this effect was also taken on the document itself. As against the averment of the petitioner that his son, the detenue is not knowing English language, the 4th respondent has stated that the officer, who served the detention order and the grounds of detention, had read over the same to the detenue and explained the contents of the same in Malayalam to him and the detenue had signed the endorsement to that effect on the back of the detention order as is evident from Annexure A1, which is the back page of grounds of detention. It is seen from the original, which contains a certification by the Sub Inspector of Police, who arrested the detenue to the effect that the Officer had read over the detention order to the detenue and served him a copy of the same along with the ground for detention and has acknowledged that he has understood the same. The detenue has acknowledged receipt of the copy of the detention order and grounds of detention and put his signature which is in English. There is a further certification that the Officer had informed the detenue in writing of his right to represent to the Government and before the Advisory board against the

arrest and a separate acknowledgment to the said certification was taken from the detenue. Thus, Annexure A1 contains four parts - certification of arrest and certification of order of detention along with the grounds thereon, acknowledgment of the same by the detenue, certification to the effect that the Officer had informed the detenue about his right to represent the matter to the Government and to the Advisory Board and acknowledgment thereto signed by the detenue. Annexure A2 is produced along with the statement of the 4th respondent to show that the detenue had studied up to IXth standard. It is stated that in one of the case in which the detenue is an accused is a case in which he had made plans to visit foreign country through a forged passport which would prove that he is well versed in English.

8. The 5th respondent, the Superintendent of Central Prison, Viyyur, in his statement has submitted that Shaji was admitted in the Central Prison on 12.6.2007 based on the order issued by the District Collector on 11.6.2007 and the Jail Admission Authorization issued by the District Collector is Annexure A. The subsequent confirmation order passed by the Government is produced as Annexure B.

9. In the reply affidavit filed by the petitioner, he has denied the averments made by the respondents in their counter affidavit. It is his case

that the detaining authority is bound on the act of the Station House Officer. According to the petitioner, in order to attract Section 2(p) of the ordinance there shall be at least three convictions by a competent court of law and three other criminal cases on complaints initiated by persons other than police officers which is not satisfied in this case. He has also denied the allegation that his son is presently functioning as a goonda leader with many anti socials in the gang under him and according to him, only one case is registered against his son after 2002. According to the petitioner, the detaining authority has acted in a mala fide manner under the influence of the police officers without any bona fides and in violation of the constitutional and statutory rights of the detenue and without proper application of mind.

10. We have heard the arguments of Sri. K.A. Jaleel, the learned counsel appearing on behalf of the petitioner and the Special Government Pleader Sri. K.K. Raveendranath appearing on behalf of the State. It is the contention of the learned counsel appearing for the petitioner that Ext.P1 order is per se illegal and ab initio void for the reason that all the relevant documents are not issued to the detenue. According to him, the detenue was not informed of his right to represent before the Government and the Advisory Board and the detenue will not satisfy the definition of the term

"known rowdy" as defined in the Ordinance. It is his further case that the order of detention passed by the detaining authority cannot be based on information furnished by the Station House Officer as per the provisions of the Act. It is also his case that Ext.P2 bail order issued y this Court in a recent case was not placed before the detaining authority and as such, the detaining authority had no occasion to form an opinion based on the said order and to say whether preventive detention is required to be made . According to him, the detenue has informed and this Court, in the bail order, has given an opportunity to him, which fact, if placed on record before the detaining authority, it would not have perhapses ordered his detention. Per contra, it is contended by the learned Government Pleader that petitioner's son satisfies the term "known rowdy" as defined in the Ordinance and that all procedural formalities have been complied with as required by law and there is no infirmity in whatsoever the nature in this regard. The file will disclose that it is on the information from the Commissioner of Police, who is the sponsoring authority and after considering the report and various other factors made mention of in the report and after evaluating such matters by the detaining authority independently and after applying his mind, that he had exercised the power under Section 3(1) and 3(2) of the Ordinance in ordering detention of the

petitioner's son which was confirmed by the Government. He also placed reliance on the certification made by the officer who arrested the petitioner's son pursuant to Ext.P1 order and the acknowledgment given by the detenue to contend that the detenue was served with the order of detention and the grounds thereon. Further, the petitioner had the copies of the FIRs in the various criminal cases in which the petitioner's son is an accused, some of which are pending trial, served on him as contemplated under the Code of Criminal Procedure. The detenue, at no point of time, did ask for any further details, if he had no such documents in his possession or even represented to the Government in this regard. He was also informed of his right to make a represention to the Government as well as to the Advisory Board which fact is also acknowledged by him in writing. Hence there is no basis for the allegation that there is any procedural irregularity as contended by the counsel appearing for the petitioner.

11. We shall now deal with the contention as raised by the parties. It is the contention of the petitioner that the documents which form the basis of the order of detention is not served on the detenue along with the grounds of detention, as a result of which, he is deprived of the opportunity to make an effective representation before the appropriate authority. It is

also contended that the language of the order is in English, which is not known to him. On the other hand, the respondent would submit that the order of detention, along with its grounds were served on the detenue and his acknowledgment was also taken. It is also stated that the order of detention and the grounds were read over to him and explained the contents of the same in Malayalam. Annexure A1 produced along with the statement of the 4th respondent is the order of detention along with its grounds. Annexure A1(3) is the true copy of the certification made by the Sub Inspector of Police, who served the same on the detenue to the effect that the same was served on him. The same has been acknowledged by the detenue. Further, there is yet another certification that he had been told that he has got a right to represent before the Government or before the Advisory Board, to which also a separate acknowledgment was received beneath the portion of the certification. The signature put in by the detenue is in English. Ext.A2 would show that the detenue has studied up to Standard IX. In the counter affidavit filed on behalf of the third respondent, it is specifically averred that as reported y the police officer who served the detention order on the detenue, at the time of serving the detention order, the detenue was informed that he can make a representation before the Government and also to the Advisory Board as provided for under Section 7

(1) of the Ordinance Act, which was acknowledged by him. We have already referred to the acknowledgment Annexure A1(3) in this regard. It is further averred that at the time of service of the order, the contents of the same and the ground of detention served along with it were read over and explained to the detenue in Malayalam which was acknowledged by the detenue on its backside. But the certification portion which is already referred to by us, however, does not indicate that the detention order and the grounds were explained in Malayalam. But the certification do show that the same was read over to the detenue and that he understood the same and he has acknowledged the same beneath the portion of the certification so made. Therefore, it can not be said that the detenue has not understood the contents of the order and the grounds of detention. Further, it would show that he is not an illiterate person and his hand-written acknowledgment in the certification itself is in English. Hence there is no basis for the contention that the detenue did not know about the contents of the detention order and the grounds of detention. He had also been told that he has an opportunity to make a representation before the Government as well as the Advisory Board.

12. It has been held by the apex court in **Wasi Uddin Ahmed v. District Magistrate, Ahgarh (AIR 1981 SC 2166)** that the constitutional

imperatives indicated in Article 22(5) are two fold (i) the the detaining authority must, as soon as may be, that is, as soon as practicable, after the detention, communicate to the detenue the grounds on which the order of detention has been made and (2) the detaining authority must afford the detenu the earliest opportunity of making a representation against the order of detention. The apex court had occasion to consider a similar question where the documents were served in Hindi which is not a language conversent with by the detenue. While considering the said contention, the apex court held that no grievance was made in the representation filed by the detenue before the Advisory Board and further he admitted before the Board that he knew Hindi and actually read out the document in Hindi while making his submissions before the Advisory Board. Thus, on the factual matrix present in the case, we don't find that there is any procedural violations as alleged infringing his right of making effective representation.

13. As per the grounds for detention, Ground No.1 refers to the fact that the detenue was involved in around 19 criminal cases, including attempt to murder, hurt, Arms Act etc. The time numbers are also clearly shown. He has no case that he has not involved in the crimes referred to therein. The details of these crimes were very much available with the detenue as according to the respondents, in para 12 of their counter

affidavit, it is specifically averred that he was involved in 19 criminal cases of various police stations and he figured as an accused and was committed on investigation in four cases. Crime 432/2004 of Ernakulam North Police Station is a dacoity case. Crime No. 62/2004 of Palarivattom Police Station and Crime No.190/2002 of Ernakulam North Police Station are cases of grievous hurts filed against the detenue . Crime No. 435/2006 of Chengamanadu Police Station is a case of cheating and passport forgery. All these cases were initiated on complaints by persons other than police officers. Thus, when the detenue has already committed to investigation, it cannot be said that he had no knowledge about his involvement in these crimes. Petitioner has no case that the FIR and other documents relating to those crimes were not served on him by the Magistrate Court, where they are pending. As a matter of fact, there is no denial of the fact that the detenue has involved in these crimes.

14. The contention that he was not given the copies of the First Information Report in the criminal case in which he was convicted and three other criminal case pending against him was not furnished to him as a ground to vitiate the order, is misconceived. Under Section 173 (5) of the Code of Criminal Procedure, the detenue had already been supplied with all the documents or relevant extracts thereof on which the prosecution

relied in the criminal case in which he was convicted as well as on which the prosecution proposes to rely in the three criminal case pending against him. there was therefore, no need to supply the copies of the first information reports referred to in the grounds of detention over again and no grievance can be made that the detenue was deprived of the right of making a representation at the earliest opportunity due to non supply of those documents. (See AIR 1981 SC 2166).

15. The next ground urged is that the detenue is not a 'known rowdy' within the meaning of Section 2(p) of the Ordinance. For easy refernce, we shall reproduce Section 2(p) which defines 'known rowdy' as follows:

> "Known Rowdy" means any person, who had been found, by reason of acts done within the previous seven years as calculated from the date of the order imposing any restriction or detention under this Ordinance:--
>
> (i) guilty, by a competent court at least once for an offence of the nature under item (i) of clause (t) of Section 2 or any offence notified as such under the said clause;
>
> (ii) guilty, by a competent court at least twice for any offence of the nature under item (ii) of clause (t) of Section 2 or any offence notified as such under the said clause;
>
> (iii) committed, on investigation or enquiry by a competent police officer or other competent authority, on complaints initiated by persons other than police officers, in three separate instances not forming part of the same transaction, any offence mentioned in clause (t) of Section 2.

Section 2(t) defines the term "Rowdy" which is also quoted hereunder:

> "Rowdy" means and includes a person who either by himself or as a member of a gang commits or attempts to commit, or abets the commission of any offences under Chapters XVI, XVII & XXII of the Indian Penal Code, 1860 (Central Act 45 of 1860), or any offences under the provision of the Arms Act, 1959 (Central Act 54 of 1959), or the Explosive Substances Act, 1908 (Central Act 6 of 1908)
>
> (i) punishable with more than five years of imprisonment of any type, or;
>
> (ii) with less than five years of imprisonment of any type, excluding those punishable with less than one year of imprisonment, or
>
> such offences under any other law for the time being in force, coming under item (i) or (ii) as may be notified by the Government, from time to time."

16. Learned counsel for the petitioner would contend that in the absence of the word 'or' in between clause (i), (ii) and (iii) of Section 2(p), unless all the acts mentioned under clauses (i), (ii) and (iii) are satisfied, a person cannot be called as a 'known rowdy' within the meaning of the said Section. We are unable to accept this contention for the reason that as per Section 2(t), a person either by himself or as a member of a gang commits or attempts to commit or abets the commission of any offences under Chapters XVI, XVII and XXII of the Indian Penal Code or any offences under the provisions of the Arms Act or Explosive Substances Act, punishable with more than five years of imprisonment of any type or with

less than five years of imprisonment of any type, excluding those punishable with less than one year of imprisonment or such offences under any other law for the time being in force, coming under item (i) or (ii), as may be notified by the Government, will fall under the definition of the term 'rowdy'. When as per Section 2(p), if a person is guilty of an offence of the nature made mention in Section 2(p)(i) or guilty twice for an offence under item 2(t) or commit on investigation or enquiry by a competent court, based on complaints other than by a police officer, in three separate incidents, he will fall within the definition of the term 'known rowdy'. True, the word 'or' is absent as between Clauses (i) and (ii) or (ii) and (iii) of Section 2(p). But equally, the word 'and' is also absent as between the sub clauses and we cannot imply the word "and" in between to understand the meaning as conveyed by the definition. We can not supply any word to the provision and convey a different meaning not sanctioned by the legislative intend. Further, if the argument of the learned counsel for the petitioner is accepted, even if a person is guilty three or four times of a serious offence falling under item (i) of Section 2(t) and if he is not held guilty of an offence under clause (ii) or (iii), he cannot be understood as a 'known rowdy' as defined under Section 2(p). In other words, even though he would have been guilty of an offence of a serious nature for more than four

times, merely for the reason that he is not held guilty of an offence of a lesser gravity at least for once, he cannot be called a 'known rowdy'. This appears to be an unreasonable interpretation. On a combined reading of the term 'rowdy' as defined under Section 2(t) and also the term 'known rowdy' as defined under Section 2(p) the possible and reasonable interpretation would be to read the various acts mentioned under clauses (i), (ii) and (iii) of Section 2(p) and if he has committed any one of the act, he will satisfy the term 'known rowdy'. We hold that each such act enumerated under clauses (i), (ii) and (iii) of Section 2(p) is distinct and separate and if a person commits any one of the act referred to therein, he will be a 'known rowdy' within the meaning of Section 2(p).

17. The next contention advanced by the learned counsel appearing for the petitioner is that the order Ext.P1 was not confirmed by the Government, as provided under Section 3(3) of the Ordinance. The order of detention Ext.P1 is dated 11.6.2007. This was valid for a period of ten days. The confirmation order passed by the Government is Ext.R3(c) dated 19.6.2007, which is produced along with the counter affidavit filed on behalf of the third respondent. It is before the expiry of ten days period which is the initial period of detention. Further, by the very same order, Government directed that the period of detention of ten days as ordered by

the detaining authority be substituted with the period of six months in exercise of its powers under Section 13(1) of the ordinance. As per sub-section (3) of Section 3 of the Ordinance, when any order is made under the said section by the authorised officer under sub-section (2), he shall forthwith report the fact to the Government and the Director General of Police, Kerala, together with a copy of the order and supporting materials which, in his opinion, have a bearing on the matter and no such order shall remain in force for more than ten days, excluding gazetted holidays, from the date of detention of such Known Goonda or Known Rowdy, unless, in the meantime, it has been confirmed, by the Government. Thus, the confirmation order passed by the Government, as already referred to above, is well within the period of ten days of the original detention order and hence the contention that the same was not confirmed as contemplated under Section 3(3) of the ordinance has only to be repelled.

18. Ground No.4 of the grounds for detention refers to some confidential information from the area which suggests that the detenue is very active and many anti social activities occurring in the area is under his guidance and protection, even though he is physically not present on the ground. According to the petitioner, this confidential information is not furnished to the detenue. In the counter affidavit filed on behalf of the

third respondent, it is specifically averred that the Commissioner of Police, vide his report dated 10.6.2007 has reported that the detenue is currently involved in activities prejudicial to the maintenance of public order and that he is a known rowdy as defined in the Kerala Anti-social Activities Prevention Ordinance, 2007. It is also reported that he is presently working as a goonda leader with many anti socials in the gang under him, who do the work for him and that he is very active and many anti social activities occurring in the area is under his guidance and protection, even though he is physically not present on the ground. The report further says that he works through intimidation and coercion to settle various financial transactions and has a hold in the land and the building mafia in Kochi city. This report was also evaluated by the detaining authority including the preliminary report of the Circle Inspector of Police, Ernakulam. It is after evaluation of these reports and connected records that the detaining authority recorded satisfaction that the detenue is a 'known rowdy' as defined under the ordinance and that if he remains at large, he would indulge in anti-social activities with regard to Kochi City which would directly or indirectly cause harm, danger or or alarm or a feeling of insecurity or cause threat to public life among the general public or residents of Kochi city.

19. We have perused the file made available to us by the Government Pleader, which contains the final report of the Commissioner of Police dated 10.6.2007, which in turn, refers to a fact that confidential information from the area suggest that the detenue is a very active and many anti social activities occurring in the area is under his guidance and protection, even though he is not physically in ground. A history sheet against him was already opened in Palarivattom Police Station and he is supposed to be the top rowdy of the city.

20. The Commissioner of Police, in his written statement, has stated that besides the four cases to which reference is made, the detenue is also an accused in a case under Arms Act and in cases under the Preventive Sections of the Code of Criminal Procedure, as is shown in the grounds of detention. Confidential information was received from the area that the detenue is very active and many anti social activities occurring in the area is under his guidance and protection, even though he is physically not present on the ground.

21. As per Section 7(1) of the Ordinance, when a person is arrested in pursuance of a detention order, the officer arresting him shall read out the detention order to him and give him a copy of such order along with the grounds on the basis of which the order has been made and he shall also be

informed in writing, under acknowledgment, of his right to represent to the Government and before the Advisory Board against the arrest and detention. In this case, the authorities, while serving the order of detention and the grounds thereon had served a copy of the same. The certificate of the officer on the reverse side of the order would also show that the same was read over to the detenue and the same was acknowledged by him and further certified that he has got a right to represent the matter before the Government, to which also, there is an acknowledgment made by the detenue separately, which is in strict compliance of the provisions of Section 7(1) of the Ordinance. As per sub-section (2) of Section 7, the Superintendent of the Jail where such person is detained shall afford him every opportunity to consult lawyers and every reasonable assistance in making a representation against the detention order to the Government or to the Advisory Board. As per the proviso thereto, it is provided thereunder that nothing in the said section shall require any authority to disclose to the detained person any fact, the disclosure of which will reveal the identity of any confidential source or the disclosure of which will be against the interests of internal security or national security. Therefore, the authorities are not bound to inform the confidential source of information. Therefore, the non furnishing of the confidential information made mention of under

Ground No.4 will not vitiate the order of detention. In this connection, we may refer to the decision of the apex court in **Bhawarlal v.State of Tamil Nadu** (AIR 1979 SC 541) wherein it was held that there is no need to give copies of intelligence report. It was then contended that the authorised officer, while passing the order of detention, had only information from the Station House Officer of the palarivattam Police Station. According to the counsel appearing for the petitioner, as per sub-section (i) of Section 3 of the Ordinance, information has to be received by the authorised officer from a police officer not below the rank of a Superintendent of Police and the Station House Officer is not in the rank of a Superintendent of Police and therefore, the order is vitiated.

22. In the counter affidavit filed by the authorised officer, it is specifically averred that the Commissioner of Police, Kochi City, has, vide his report dated 10.6.2007, reported that the detenue is currently involved in activities prejudicial to the maintenance of public order and that he is a known Rowdy as defined in Kerala Anti-social Activities Prevention Ordinance, 2007. The reports of the Circle Inspector of Police, Ernakulam, is a preliminary report in the matter which was forwarded along with the final report of the Commissioner of Police dated 10.6.2007 and it was after evaluating all these reports and information passed on to

him that he came to the decision that the detenue should be kept under preventive detention.

23. In para 5 of the the counter affidavit filed by the third respondent, it is stated that credible information is received from the third respondent station House Officer through the Commissioner of Police, Kochi City regarding the detenue. We have perused the records and find that the information as conveyed vide FIR No. 372/2007 is under Section 3 (1) of the Ordinance, prepared by the Sub Inspector of Police, the Station House Officer, which was forwarded by the Commissioner of Police, by submitting a report for initiation of formal action under the Ordinance. There is a final report also under date 10.6.2007 from the Commissioner of Police, Kochi City which contains detailed information as is referred to in the order of detention. Thus, the information is actually conveyed by the Commissioner of Police who is in the rank of Superintendent of Police and as such it is not correct to say that the authorised officer has acted based on the information conveyed by the Station House officer only. This contention also is rejected.

24. It was lastly contended that while passing the order of detention by the authorised officer and subsequently by the Government, confirming the order of detention, they did not consider the bail order issued in favour

of the petitioner as evidenced by Ext.P2 produced in the writ petition. According to the learned counsel for the petitioner, the non consideration of the bail order will vitiate the order of detention passed by the authorities since there was no proper application of mind.

25. In **Abdul Sathar Ibrahim Manik v. Union of India (1992 SCC (Crl.) 1)** the apex court had occasion to deal with a similar situation. That was a case where the detenue was already in jail. The bail application made by the detenue and the order of rejection were not placed before the detaining authority. It was held that it would not amount to suppression of relevant materials. It was also held that the non supply of the ground of detention, copy of the bail application moved by the detenue and the rejection thereof will not vitiate the detention order, when those documents were only referred to and not relied on by the detaining authority while passing the order and the detenue was fully aware of the contents of those documents. **T**he apex court held that if the detenue had moved for bail then the application and the order thereon refusing bail even if not placed before the detaining authority, does not amount to suppression of relevant material. However, in a case where the detenue is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground

for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu. It was also held that when the detaining authority has merely referred to the bail application while narrating the facts; but has not relied upon them, the failure to refer to such a bail application and order refusing bail will not cause any prejudice to the detenue in making any effective representation.

26. Here is also a case where no reference was made to the bail order and indisputably they were not placed before the detaining authority. The grounds do not disclose that the detainig authority had relied on any of these documents. The bail order itself was not placed on record and the detainig authority has not placed any reliance thereto. It cannot be said that such action has in any way prejudicially affected the detenue's right to make any representation.

27. However, in **Asharaff v. State of Kerala** (2001(1) KLJ 684) a Division Bench of this Court specifically considered the question as to whether the non consideration of bail application and the order granting bail by a Magistrate would vitiate the detention order issued under Section 3(1) (i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. This Court also referred to the decision of

the apex court in **M. Ahammedkutty v. Union of India** (1990(2) SCC 1) wherein it was held as follows:

> "Considering the facts the bail application and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired, and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. It must therefore be, held that if amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Article 22(5) rendering the continued detention of the detenue illegal and entitling the detenue to be set at liberty in this case. "

Both the decision of the apex court were later considered by this Court in **Pathooty v. State of Kerala** (2001(1) KLT Sh.N. page 30). This court noticed the distinction between bail being granted before the order of detention and bail being granted subsequent to the order of detention. This court held that when detenu was already on bail before detention order was passed, bail order and bail application were vital documents which are to e considered by the detaining authority. Purpose of the detention under COFEPOSA is not punitive but preventive; but where the liberty of a

citizen is infringed it is the bounden duty of the court to take all safeguards. When once liberty is to be curtailed on the subjective satisfaction of the detaining authority with area of interference by the court then the court must see that the detaining authority does not stretch legitimately in the exercise of its jurisdiction. Non consideration of vital documents would vitiate the order of detention. When detenu is on bail granted by a competent court, application moved by the detenue and the bail granted by the court are all vital documents. Detaining authority is arresting and detaining a person who is granted bail by a competent court. Therefore, it is imperative that those documents should be considered while passing order of detention. It was after referring to the above decision that this Court, in Asharaff 's case (2001(1) KLJ 684) held that the detenue is on bail granted by a competent court and the application for bail and bail granted also should be taken into consideration while passing the order of detention. In **Varadharaj v. State of Tamil Nadu**, ((2002) 6 SCC 735) it was held by the apex court that while making the detention order in respect of a person detained under a detention Act, it is not always mandatory for the detaining authority to take into consideration the bail application filed by the detenu and any order passed thereon by the criminal court. Such a requirement would depend upon the facts of each case. In that case, the detenu was in

police custody while passing the order, since he did not furnish security as ordered in the bail order. But the court held that the bail application was not opposed as a relevant fact, the non consideration of which vitiated the order of detention.

28. Admittedly, the bail order Ext.P2 was not placed before the detaining authority, nor before the Board. Neither the detaining authority nor the Government had occasion to consider Ext.P2 order issued in this case. But the learned Special Government Pleader appearing on behalf of the State would submit that unlike a case arising under COFEPOSA , the detention made under the Ordinance as per which only the defined class coming under the provisions of the Act could be detained. Since in the present case, the detenue has satisfied the definition of the term 'known rowdy' as defined under Section 2(p) of the Act, the fact that he was released on bail in respect of any offence pending trial in no way will affect the order of detention passed under the Ordinance. Though prima facie we find some force in this argument, on a closer scrutiny, we find that there is no merit in this contention. As per Article 22(5) of the Constitution of India, when a person is detained in pursuance of an order made under any law, providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on

which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

29. Article 22 consists of two parts - Clause (1) applies to persons arrested and detained otherwise than under preventive law and clause (2) relates to persons arrested and detained under the preventive law. It is true that under Section 3 of the COFEPOSA Act, the authorised officer as empowered may order to detain a person, if satisfied, with a view to prevent him from acting in any manner prejudicial to the security of the State or maintenance of preventive order as contemplated under Section 3 (2)(d) of the Act. Actually, such information is formed based on the incident in which the detenu is alleged to be involved.

30. On the other hand, in the present case, there is a further safeguard under the Ordinance that only the defined class of person under the Ordinance can be kept under preventive detention. Section 3 of the ordinance provides that the authorised officer, if satisfied on information received from a police officer not below the rank of a Superintendent of Police with regard to the activities of any known goonda or known rowdy that with a view to preventing such persons from indulging in any antisocial activity within the State of Kerala in any manner, it is necessary so to do make an order directing that such person be detained. In other words, it

contains two part. He must be a 'known goonda' or a 'known rowdy' to attract Section 3. As per the latter part of Section 3, the detention must be with a view to prevent such person from indulging in any antisocial activities or in any manner, it is necessary to make an order directing that such a person should be detained. Therefore, even if he is a 'known goonda' or a 'known rowdy' the authorised officer has to be satisfied about the latter part of the section namely, that with a view to prevent such person from indulging in any antisocial activities, it is necessary to detain him. In the context of considering the second part that the consideration of the bail order passed by the competent court of law it becomes important.

31. As noticed above, the non consideration of the bail order passed by the competent court as has been held by this Court and by the apex court would show non consideration of a fact material while forming an opinion to keep him under preventive detention. In this context, the learned counsel for the petitioner would further submit that the condition of the bail was strictly complied with by the detenue. In para 2 of the order this court has noticed the contention of the petitioner that though the accused had committed different offences, he had reformed himself and has now married and leaving the criminal activities. It was his further submission that because of his mental reformation he is practicing himself of the pious

thoughts and actions. But this court agreed with the argument of the prosecution that the Circle Inspector of Police Emigration Department had detected the petitioner who was trying to flee from the State since there were four cases registered against him by the Ernakulam North Police Station and two cases registered by the Palarivattom Police Station and in spite of the fact that photographs were affixed in the strategic points of the State, petitioner dared to flee from the hands of justice and to prevent the action to be taken against him. This was the contention raised to oppose the bail application. But this Court, taking into consideration of the contentions by both sides, granted an opportunity to the petitioner so that he may not be continuously put into the group of persons , with whom he had acquaintance or connected activities and granted bail with certain conditions. According to the petitioner, those conditions are strictly complied with by the detenue. Therefore, according to him, if the detaining authority had before him, the order of bail granted to the detenue, perhaps he might not have ordered to keep the detenue under preventive detention and at any rate, the non consideration of such an order is therefore, vitiated the order of detention.

32. We find that there is strong force in this submission. The Government has to necessarily reconsider the matter afresh and take a

decision whether further detention of the detenue is necessary or not, particularly in the light of the bail order, Ext.P2. We have already found that the authority has considered the various relevant factors, except Ext.P2, the order of bail while passing the impugned order, the object of which is to prevent the detenue from indulging in any antisocial activity. We have also approved the order of detention in every respect, except for non consideration of the bail order.

33. In such circumstances, it cannot be visualised at this juncture, whether in spite of consideration of the order of bail, the authority may be pleased to decide whether the order of detention has to continue or not. It is solely within the realm of the authority to take a decision on this aspect. The order of detention is issued to prevent any probable harm to the society. Though the omission to consider Ext.P2 is vital, we find that on the facts and circumstances of this case, it may not be proper, in the interest of justice, to leave the detenue free, until a fresh decision is taken by the Government. We are therefore, constrained not to disturb the detention of the detenue for the time being, in the interest of justice and the society at large, until a fresh order is passed by the Government in the matter, at the earliest. We issue the following order.

i. If the petitioner makes a representation to the Government within

ten days from the date of receipt of a copy of this judgment, the Government shall bestow consideration with all the relevant facts including Ext.P2 order of bail granted by this Court and pass appropriate orders as to whether the detenue should be continued to be kept under detention.

ii. The Government shall pass appropriate orders as expeditiously as possible and at any rate, not later than two weeks from the date of receipt of the representation and communicate the order to the detenue.

iii. In case no order is passed as aforesaid within time, the detenue shall be released, immediately on expiry of the time limit.

The writ petition is disposed of as above.

P.R. RAMAN,
(JUDGE)

K. HEMA,
(JUDGE)

knc/-